

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THIRTIETH REGION

CARROLL COLLEGE, INC.

Employer

and

Case 30-RC-6594

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA - UAW**

Petitioner

SUPPLEMENTAL DECISION, ORDER OVERRULING OBJECTIONS, AND

CERTIFICATION OF REPRESENTATIVE

Pursuant to a petition filed on November 17, 2004, and a Regional Director's Decision and Direction of Election issued on January 13, 2005, an election was conducted on February 11, 2005, among the employees of the Employer in the following-described appropriate collective bargaining unit:

All full-time and regular part-time tenured and non-tenured teaching faculty employed by the Employer, excluding administrators, deans, adjunct faculty, all other employees, managerial employees, and guards and supervisors as defined by the Act.¹

Following the election, the ballots were impounded pending the Board's decision on the Employer's January 26, 2005 Request for Review of the Regional Director's Decision and Direction of Election. On August 31, 2005, following the Board's August 26, 2005 decision discussed infra, the ballots were counted, and a tally of ballots was made available to the parties at that time. The tally of ballots shows the following results:

¹ In his Decision and Direction of Election, the Acting Regional Director held that the professional and reference librarians shall be permitted to vote subject to challenge.

Approximate number of eligible voters
Void ballots
Votes cast for Petitioner
Votes cast against participating labor organization.....
Valid votes counted
Challenged ballots.....
Valid votes counted plus challenged ballots101 Challenges are not sufficient in number to affect the results of
A majority of the valid votes counted plus challenged ballots has been cast for Petitioner

On September 7, 2005, the Employer filed timely objections regarding, not conduct affecting the results of the election, but rather, as styled by the Employer, “the fact that the election was conducted.” The Employer’s first objection is that the Acting Regional Director and the Board erred in failing to consider evidence that the Employer believes establishes the petitioned-for faculty members are “managerial” employees.² The Employer’s second objection is that the Board erred in its analysis and conclusion regarding the Employer’s status and rights under the Religious Freedom Restoration Act (“RFRA”). Pursuant to Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation to be made of the objections.³ Accordingly, the undersigned concludes and orders as follows:

Background

After the Petitioner filed a petition to represent a unit of the Employer’s employees, a hearing was held on November 30, 2004 through December 3, 2004, and December 6, 2004 on issues including whether the Employer’s full-time and part-time faculty are managers and/or supervisors, and whether the Employer is subject to the Board’s jurisdiction because of its

²The Employer did not renew its previous contention that the faculty members are supervisors.

³Having duly considered the Employer’s objections, I conclude there are no factual issues that would require resolution by means of a hearing.

affiliation with a religious institution. On January 4, 2005, the Employer submitted its posthearing brief. On January 5, 2005, the Petitioner filed its post-hearing brief. The Acting Regional Director⁴ issued his Decision and Direction of Election and an election was scheduled.

On January 21, 2005, the Employer filed with the Board a “Motion of Carroll College, Inc. to Postpone the Representation Election Now Scheduled for February 11, 2005 Until the Board Rules on Carroll College’s Request for Review.” On January 26, 2005, the Employer filed a “Request for Review By Carroll College, Inc.” In its Request for Review, the Employer asserted the Acting Regional Director erred in concluding the Employer’s full-time and part-time faculty, tenured and non-tenured, are eligible to vote in an election; the librarians may vote subject to challenge; and the Act can be applied to the Employer consistent with the RFRA.

On February 1, 2005, the Employer informed the Acting Regional Director that it intended to challenge “... all petitioned-for teaching faculty as ‘supervisors’ and ‘managerials’” at the February 11, 2005 election. On February 7, 2005, the Employer filed the “Second Motion of Carroll College to Postpone the Election Now Scheduled for February 11, 2005 Until the Board Rules on the College’s Request for Review.” On February 10, 2005, the Board denied the Employer’s “Motions to Postpone the Representation Election Now Scheduled for February 11, 2005 until the Board Rules on Carroll College’s Request for Review.”

On February 11, 2005, the election was held and the ballots were impounded pending the Board’s decision on the Employer’s Request for Review. On May 11, 2005, the Board granted the Employer’s Request for Review solely with respect to the Acting Regional Director’s

⁴The Decision and Direction of Election was signed by Acting Regional Director Sharp. All other references to the Acting Regional Director not specific to the Decision and Direction of Election are to the undersigned.

application of RFRA. The Board granted the parties' requests for an extension of time to file briefs, as well as requests by others to file amicus curiae briefs.

On August 26, 2005, the Board issued its decision in *Carroll College, Inc.*, 345 NLRB No. 17. In its decision, the Board independently considered the Employer's RFRA claim, concluded the application of the Act to the Employer does not violate the RFRA and, therefore, affirmed, albeit for different reasons, the Acting Regional Director's Decision. Footnote 4 states:

The Board denied the Employer's request for review of the Acting Regional Director's Finding that the Employer's faculty are not managerial employees within the meaning of *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), or supervisors within the meaning of Section 2(11) of the Act. The Board also denied review of the Acting Regional Director's determination that the Employer's librarians should be permitted to vote subject to challenge because there was insufficient evidence to determine whether they should be included in the unit.

Following the issuance of the Board's decision, the Acting Regional Director scheduled a counting of the ballots for August 31, 2005. On August 31, 2005, approximately one hour before the ballot count was scheduled to begin, the Employer filed a request with the Acting Regional Director that a hearing be held, before the ballots are opened, on the eligibility of each member of the full-time faculty to determine whether he or she is "managerial." A copy of the Employer's request for a hearing is attached as Attachment A. On August 31, 2005, the Acting Regional Director met with the parties and orally informed them he was denying the Employer's request for a hearing.⁵ The ballots then were counted and a tally of ballots issued.

⁵On September 1, 2005, the Acting Regional Director issued an Order confirming his oral denial of the Employer's August 31, 2005 request for a hearing. A copy of the Acting Regional Director's Order is attached as Attachment B.

On September 7, 2005, the Employer filed timely objections, a copy of which was served on the Petitioner, and is attached as Attachment C. The Acting Regional Director issued a letter to the parties soliciting their positions on the Employer's objections. On September 14, 2005, the Employer submitted its position. A copy of the Employer's position is attached as Attachment D.⁶ On September 21, 2005, the Union submitted its position. **Objections**

The Employer's first objection deals with an alleged failure on the part of the Acting Regional Director and the Board to consider evidence developed in the pre-election hearing the Employer contends establishes that its full-time faculty are clearly "managerial." To support its claim, the Employer points to the Acting Regional Director's treatment of evidence regarding the faculty's involvement in decisions in hiring, decisions on tenure and promotion, and decisions on courses and majors. Each of these arguments were made in the Employer's Request for Review to the Board, which the Board denied.⁷ The Employer raises no new factual evidence not contained in the record or new legal arguments not previously presented to the Acting Regional Director prior to the issuance of the Decision and Direction of Election or to the Board in the Employer's Request for Review. The first objection merely seeks to re-litigate the managerial

⁶Also incorporated into this record, by reference, is the full record previously submitted to, and considered by the Board, consisting of the pre-election hearing transcript and exhibits, the post-hearing briefs submitted by the parties, the Decision and Direction of Election, the Employer's First and Second Motions to postpone the election, the Employer's Request for Review, the Board's May 11, 2005 grant of review of the RFRA issue, the briefs submitted thereto by the parties and amicus curiae, and Board's August 26, 2005 decision reported at 345 NLRB No. 17.

⁷The Employer's analysis of the faculty's role in hiring, tenure and promotion, and course content is strikingly similar to its analysis in its Request for Review, particularly pages 6-9 and 15-24. In its objections, the Employer references the faculty's involvement in admissions—an argument that should have, but was not, raised before the Board. Nonetheless, it is an argument based on evidence that was in the record submitted to the Board when the Employer filed its Request for Review.

issue. I conclude, therefore, that the first objection is without merit, and that it should be overruled.⁸

The second objection centers on the Board's treatment of the Employer's religious affiliation under the RFRA. In *Carroll College, Inc.*, 345 NLRB No. 17, the Board conducted a detailed and thorough analysis of the record evidence developed in the pre-election hearing and determined that the RFRA does not prohibit the Board's jurisdiction from extending to include the Employer. As a result, the second objection merely seeks to re-litigate the RFRA issue. I conclude, therefore, that the second objection is without merit, and that it should be overruled.

For the reasons set forth above, I hereby overrule the Employer's objections in their entirety.

⁹ Accordingly, I hereby issue the following:

CERTIFICATION OF REPRESENTATIVE

An election having been conducted under the Board's Rules and Regulations, the tally of ballots shows that a collective-bargaining representative has been selected. The undersigned has overruled the Employer's objections in their entirety, and the investigation has failed to disclose evidence of other conduct that would provide a basis upon which the election may be set aside.

⁸ Section 102.67(f) of the Board's Rules and Regulations states, in pertinent part, the following: "Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding."

⁹ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this supplemental decision may be filed with the Board in Washington, DC. Exceptions must be received by the Board by October 14, 2005. Under provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits which a party has timely submitted to the Acting Regional Director in support of its objections, and which are not included in the Report, are not a part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Acting Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

As authorized by the National Labor Relations Board,
IT IS CERTIFIED that a majority of the valid ballots have been cast for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America -UAW and that it is the exclusive collective-bargaining representative of the employees in the abovedescribed unit.

Signed at Milwaukee, Wisconsin on September 30, 2005.

Irving E. Gottschalk, Acting Regional Director
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